

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,)
W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA,)
et al.)
Plaintiffs,)
V.) No. 05-CV-329-GKF-SAJ
TYSON FOODS, INC., et al.,)
Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FEBRUARY 19, 2008

PRELIMINARY INJUNCTION HEARING

VOLUME I

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

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1 previously sworn, testified as follows:

2 CROSS-EXAMINATION

3 BY MR. GEORGE:

4 Q. Good morning, Dr. Teaf. My name is Robert George. I
5 don't believe you and I have had the pleasure of meeting
6 before, have we?

7 A. No, sir.

8 Q. You said yesterday, Doctor, that you were paid \$400,000
9 for your work in this case; is that right?

10 A. Yes, since August of 2004, about three and a half years.

11 Q. Did the attorney general's office make that payment?

12 A. I don't know who the checks come from to be honest with
13 you.

14 Q. You don't know who is paying your bill?

15 A. I don't know who the checks come from. I'm working with
16 the attorney general's office.

17 Q. You are not aware that your bills are actually being paid
18 by the law firm of Motley Rice out of South Carolina?

19 A. I don't look at the -- I have not looked at the checks. I
20 don't know how more clear I can be.

21 Q. Yesterday, sir, you showed us some bar graphs, and I refer
22 you to Plaintiffs' Demonstrative 398. And if I understand,
23 this is a demonstrative that you put together; correct?

24 A. Yes, sir.

25 Q. And it reflects Campylobacter infection rates in Adair

1 A. I was first contacted in August 2004 and then did not
2 start working on the case until April 2005.

3 Q. Now, what is your understanding, Doctor, about the subject
4 matter of the case that's before the Court today?

5 A. The Oklahoma Attorney General has filed suit against some
6 poultry integrators in order to stop or place a moratorium upon
7 land application of poultry litter due to environmental,
8 ecological and human health hazards associated with that
9 practice.

10 Q. Were you given any assignments in this case?

11 A. I was asked to help plan sampling procedures, review
12 analytical results for microbiology analyses and render
13 opinions on the -- on aspects of microbiological water
14 contamination from land applied poultry litter and human health
15 risks that could result from that practice. And also worked in
16 conjunction with North Wind Laboratory to develop what we term
17 a poultry litter biomarker, a specific PCR assay for bacteria
18 that are associated with poultry litter, to use as a tracer for
19 land applied poultry litter.

20 Q. Okay, Doctor. Doctor, what materials have you reviewed in
21 order to accomplish those assignments?

22 A. Well, I've reviewed a lot of documents, but they include
23 results of microbial testing that were sent to me by CDM. And
24 the analyses were done by laboratories, three laboratories,
25 FoodProtech, A&L Laboratory and EML Laboratory. I reviewed

1 little bit of sensitivity in that process.

2 Q. Thank you, Doctor. Who did you work with in development
3 of this PCR process?

4 A. I worked with North Wind Laboratory and that was Tamzen
5 Macbeth and Jennifer Weide were the scientists there that I
6 worked with.

7 Q. Anyone else?

8 A. We worked with Roger Olsen in terms of we worked on the
9 sampling strategy and collection.

10 Q. Do you intend to publish your findings of this study in a
11 peer reviewed scientific journal?

12 A. Yes, definitely. The abstract is submitted to the
13 American Society of Microbiology Conference which will take
14 place in June. And the manuscript is in preparation to be
15 submitted to Applied Environmental Microbiology.

16 Q. Doctor, now I want to turn your attention to Plaintiffs'
17 Exhibit 436.

18 THE COURT: Doctor, I imagine this will be touched
19 upon in cross-examination, but to the extent the manuscript is
20 in preparation, it hasn't been subjected to peer review or
21 scrutiny; correct?

22 THE WITNESS: Correct.

23 THE COURT: Go ahead.

24 MR. PAGE: Thank you, Your Honor.

25 Q. (By Mr. Page) Dr. Harwood, would you please identify for

1 A. It is indeed, as I said, new. It is new method
2 development.

3 Q. So no one else has done this before?

4 A. Other people have done very similar studies. Again, the
5 EPA's own scientists are working on this methodology. They
6 have peer reviewed publications out. It's not something that
7 nobody has ever done before. It's not speculative. It's based
8 on a reliable method and strong validation procedures.

9 Q. I believe you said a moment ago that it's not novel. Can
10 we bring up Defendants' Exhibit 293? We start on page 2 of
11 this at the very bottom. I think we need to give some context
12 to this, otherwise it doesn't make sense and we want it to be
13 fair. Does this begin with an e-mail from Roger Olsen to
14 various people, including you?

15 A. Yes, it does.

16 Q. And does he say, "We are proposing to release all
17 analytical data to the defendants. However, we don't want to
18 release any of the PCR molecular tracking results at the time.
19 Would the following statement preclude the PCR results?" And
20 the statement is, "We will deliver to defendants copies of all
21 chemical and bacteriological analytical results produced by
22 standard analytical procedures and received from commercial
23 labs, excluding any direct expert directed assessment
24 manipulation, evaluation and our interpretation and opinions of
25 the analytical results from all media, litter, soil

1 groundwater, surface water, lakes, rivers, streams, creeks and
2 sediments."

3 All right. Let's go up to the next. That's a little
4 bit of context. Let's go up to the next one, I think that
5 might be on page 1. Is that an e-mail from Kent Sorenson to
6 Roger Olsen?

7 A. Yes, it is.

8 Q. Let me read what Mr. Sorenson says. "Roger, to me it
9 comes down to your definition of standard analytical
10 procedures. While one could argue about whether the PCR or
11 other techniques might be considered standard, I think we would
12 be justified in saying this stuff is not standard, given that
13 we're dealing with a potential biomarker that has not
14 previously been demonstrated and for which we had to design new
15 primers. In that sense, this is uncharted territory."

16 Did I read that right?

17 A. Yes.

18 Q. And then let's go to the e-mail above. Who is that from
19 and to?

20 A. From Tanzem McBeth to Kent Sorenson, Roger Olsen and me.

21 Q. Does Tanzem say, "I agree with Kent, while the PCR itself
22 may be standard, the process of developing the biomarker
23 procedure is not standard. In fact, we haven't even finished
24 developing and verifying the analysis and I think any
25 disclosure of results at this point is premature"?

1 A. That was 2006.

2 Q. Let me go down to the last sentence. "The entire process
3 is highly specialized and more appropriately considered
4 developmental and cutting edge rather than standard."

5 Did I read that right?

6 A. Yes.

7 Q. And then the e-mail at the very top, who sent that?

8 A. That's from me to -- oh.

9 Q. Would you read what you said?

10 A. "I agree with Tanzem and Kent. This is method development
11 in a relatively novel research area. Nothing is standard about
12 it."

13 Q. Now, what you identified in this case is a bacteria, is
14 that right? The biomarker that you refer to is a bacteria?

15 A. It's a gene from a bacterium.

16 Q. And it's not part of a chicken's DNA, I want to make that
17 clear; is that right?

18 A. That's correct.

19 Q. It's not part of a turkey's DNA?

20 A. That's correct.

21 Q. It is a bacteria?

22 A. That's correct.

23 Q. And it's your theory that this bacteria lives in chickens
24 and turkeys; is that right?

25 A. It's not a theory.

1 Q. You decided that principal component 1 represents a single
2 non-point source of contamination from poultry litter rather
3 than a combination of different sources; correct?

4 A. That's correct.

5 Q. Sir, have you subjected those conclusions regarding your
6 interpretation of these results as indicating a poultry
7 signature to the formal peer review process to allow scientists
8 other than those retained by the Motley Rice Law Firm who are
9 experienced in interpreting PCA results to evaluate the
10 soundness of your methods and conclusions?

11 A. You mean like to a journal or something like that?

12 Q. Yes, sir.

13 A. No, we haven't at this time. We plan to do that.

14 Q. Dr. Olsen, out of all the scientists in the world who have
15 studied water quality in areas where poultry production occurs,
16 you're the only one, aren't you, sir, who holds the opinion
17 that the list of parameters that we saw in your direct
18 examination constitute a poultry signature?

19 A. Well, that poultry signature is specific to this basin and
20 I'm the only one besides other scientists in our company and
21 one outside reviewer that's looked at this. So no other people
22 outside the group or our scientific reviewer has seen this, so
23 no one else has made that conclusion.

24 Q. You recall being asked these same questions in your
25 deposition, sir?

1 A. Yes.

2 Q. Okay. Let's look at what you said in your deposition.

3 Cassie, I want to play two clips back to back, if I
4 can, sorry. Page 120, lines 13 through 18 and page 121, lines
5 3 through 122, line 2?

6 (An excerpt of the videotaped deposition of Roger
7 Olsen was played.)

8 Q. "Are you aware of a single other scientist in the world
9 who claims to have identified this list of 25 constituents and
10 the coefficients that you've developed and called that a
11 signature for chicken litter influencing water?

12 A. "I'm not aware of any, no."

13 MR. GEORGE: Play the next one too, please.

14 (An excerpt of the videotaped deposition of Roger
15 Olsen was played.)

16 Q. "Dr. Olsen, how long have scientists and governmental
17 bodies been studying the potential impact of poultry litter on
18 water quality in the United States?

19 "MR. PAGE: Object to the form.

20 A. "I don't know the exact data. I'd have to go back and
21 look at some of the literature sources.

22 Q. "Do You agree that work as been ongoing for at least
23 decades?

24 "MR. PAGE: Object to the form.

25 A. "I think it just most recently -- I don't know if it's